

JOSEPH A. SCANLAN, JR., ESQ., SBN 101928
ERIC C. McALLISTER, ESQ. SBN 252567
MILLER, MORTON, CAILLAT & NEVIS, LLP
25 Metro Drive, 7th Floor
San Jose, California 95110
Telephone: (408) 292-1765
Facsimile: (408) 436-8272
jas@millermorton.com
ecm@millermorton.com

Attorneys for Plaintiff ROBERT CHRISTENSEN

UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
(San Jose Division)

ROBERT H. CHRISTENSEN,)	Case No.: C07 04789 JF
)	
Plaintiff,)	ROBERT H. CHRISTENSEN'S RESPONSE
vs.)	TO PROVIDENT LIFE & ACCIDENT
)	INSURANCE COMPANY'S
PROVIDENT LIFE & ACCIDENT)	COUNTERCLAIM
INSURANCE COMPANY, a corporation,)	
)	
Defendants.)	
)	
)	
)	
)	
And Related Cross-Claim)	
)	

COMES NOW, Plaintiff and Counter Defendant ROBERT H. CHRISTENSEN, and answers the Counterclaim of PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, as follows:

1. Answering the allegations of Paragraph 1 of the Counterclaim, Counter Defendant admits the allegations in that Paragraph.
2. Answering the allegations of Paragraph 2 of the Counterclaim, Counter Defendant admits the allegations in that Paragraph.
3. Answering the allegations of Paragraph 3 of the Counterclaim, Counter Defendant

1 admits that the date of issue for the subject policy is April 1, 1989, but further avers that the
2 coverage under said policy was provided by a number of earlier, prior policies.

3 4. Answering the allegations of Paragraph 4 of the Counterclaim, Counter Defendant
4 admits that he submitted a claim for disability benefits, that the policy contains a 60-day
5 elimination period, and that benefits are payable for life. Counter Defendant denies the balance of
6 the allegations contained in Paragraph 4.

7 5. Answering the allegations of Paragraph 5 of the Counterclaim, Counter Defendant
8 admits the allegations contained therein.

9 6. Answering the allegations of Paragraph 6 of the Counterclaim, Counter Defendant
10 admits the allegations contained therein.

11 7. Answering the allegations of Paragraph 7 of the Counterclaim, Counter Defendant
12 admits the allegations contained therein.

13 8. Answering the allegations of Paragraph 8 of the Counterclaim, Counter Defendant
14 admits the allegations contained therein.

15 9. Answering the allegations of Paragraph 9 of the Counterclaim, Counter Defendant
16 admits the allegations contained therein.

17 10. Answering the allegations of Paragraph 10 of the Counterclaim, Counter Defendant
18 admits the allegations contained therein.

19 11. Answering the allegations of Paragraph 11 of the Counterclaim, Counter Defendant
20 admits that he received letters on the specified date, but denies the balance of the allegations
21 contained in Paragraph 11.

22 12. Answering the allegations of Paragraph 12 of the Counterclaim, Counter Defendant
23 denies the allegations contained therein.

24 13. Answering the allegations of Paragraph 13 of the Counterclaim, Counter Defendant
25 denies the allegations contained therein.

26 14. Answering the allegations of Paragraph 14 of the Counterclaim, Counter Defendant
27 denies the allegations contained therein.

28 15. Answering the allegations of Paragraph 15 of the Counterclaim, Counter Defendant

denies the allegations contained therein.

FIRST CLAIM OF COUNTERCLAIM

(Declaratory Relief)

16. Answering the allegations of Paragraph 16 of the Counterclaim, Counter Defendant realleges and incorporates his answers to Paragraphs 1 through 15 above as though fully set forth herein.

17. Answering the allegations of Paragraph 17 of the Counterclaim, Counter Defendant admits the allegations set forth therein.

18. Answering the allegations of Paragraph 18 of the Counterclaim, Counter Defendant denies the allegations contained therein.

19. Answering the allegations of Paragraph 19 of the Counterclaim, Counter Defendant admits that he disputes the position of PROVIDENT and denies the balance of the allegations contained in Paragraph 19.

20. Answering the allegations of Paragraph 20 of the Counterclaim, Counter Defendant denies the allegations contained therein.

21. Answering the allegations of Paragraph 21 of the Counterclaim, Counter Defendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

1. As a first affirmative defense, Counter Defendant alleges that no grounds are stated which constitute a cause of action cognizable in law or equity.

2. As a second affirmative defense, Counter Defendant alleges that Counter Claimant failed to comply with conditions precedent in the insurance contract prior to bringing this action.

3. As a third affirmative defense, Counter Defendant alleges that the Counterclaim is barred by Counter Claimant's prior material breach of the insurance contract at issue.

4. As a fourth affirmative defense, Counter Defendant alleges that Counter Claimant appears before this Court with unclean hands and is not entitled to legal or equitable relief.

PRAYER

WHEREFORE, Counter Defendant prays judgment as follows:

1. For a finding by this Court that Counter Claimant is not entitled to declaratory relief on account of its failure, in bad faith, to investigate CHRISTENSEN's claim for insurance benefits and failure to reject or approve such claim in the manner and time prescribed by the State of California in accordance with its administrative regulations;
2. Alternately, for a declaration that
 - a. PROVIDENT improperly handled the claim for benefits;
 - b. PROVIDENT is obligated to pay benefits to CHRISTENSEN in an amount to be determined by the jury in this action;
 - c. CHRISTENSEN is entitled to benefits from the date of his notification to PROVIDENT to the time the Court rules;
 - d. PROVIDENT is entitled only to such information from CHRISTENSEN in connection with his claim as it is entitled to under the policy and the laws of the State of California and the United States of America.
3. For costs of suit incurred herein;
4. For such other and further relief as the Court may deem just and proper.

Dated: April 7, 2008 MILLER, MORTON, CAILLAT & NEVIS, LLP

By: /s/ _____
JOSEPH A. SCANLAN, JR.
Attorneys for Plaintiff ROBERT CHRISTENSEN

::ODMA\GRPWISE\MMCN_SJDOMAIN.MMCN_SJPO.NewLitigationLibrary:34305.1

MILLER, MORTON, CAILLAT & NEVIS, LLP
25 Metro Drive, 7th Floor
San Jose, CA 95110
Telephone: (408) 292-1765